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M/s Ankita Overseas Pvt. Ltd.

Through:

Versus

\$ Shakeel Ahmed & Anr.

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CORAM:-

*** HON'BLE MR. JUSTICE S.N. AGGARWAL**

1. Whether reporters of Local paper may be allowed to see the judgment? NO
2. To be referred to the reporter or not? NO
3. Whether the judgment should be reported in the Digest? NO

S.N. AGGARWAL, J. (ORAL)

M/s Ankita Overseas Pvt. Ltd. (hereinafter to be referred as the appellant) has filed this appeal aggrieved by an order dated 25.10.2004 passed by the court below dismissing its complaint under Section 138 of NI Act in default for non-prosecution.

2 The appellant had filed a complaint against the respondents under
Section 138 of NI Act (Complaint No.2399/1) in relation to dishonour of cheque

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amounting to Rs.15,000/- allegedly issued by the respondents.

3 In response to notice of this appeal, counsel for the respondents Mr. M.S. Khan, Advocate had appeared before this court on 10.03.2006 and took time to file reply and make his submissions. On his request, the case was adjourned to 11.07.2006 but on that day, none appeared on behalf of the respondents. As a matter of abundant caution, a court notice was ordered to be sent to the respondents for today and the same is reported to have been duly served on them. Even despite service of court notice, none has appeared on behalf of the respondents for reasons best known to them.

4 The appellant's complaint under Section 138 of NI Act was dismissed in default for non-prosecution vide order passed by the court below on 25.10.2004. On that day none was present even on behalf of the respondents before the court below though they had already been served with the notice of the complaint prior to the said date. The appellant has explained the reason for its non appearance before the court on the date its complaint was dismissed in default. The reason for the same is given in para 5 of the memorandum of appeal and the same is reproduced here-in-below:-

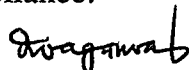
“That the authorized representative of the company has left the services without informing the director of the company about the pendency of the case and the director was unaware

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of the proceedings of the court due to which he could not appear before the Hon'ble Court and the counsel for the complainant also could not appear on 25.10.2004 due to his cases fixed in karkardooma court."

5 The appellant's authorized representative Shri Basant Sharma has filed his affidavit alongwith the appeal. I have no reason to disbelieve the reason for non appearance given by the appellant as referred above. I am of the view that no prejudice shall be caused to the respondents in case the instant appeal is allowed and the complaint under Section 138 of NI Act filed by the appellant is ordered to be heard and decided on merits.

6 For the foregoing reasons this appeal is allowed. The impugned order is set aside. The case is remanded back to the concerned trial court for disposal of the appellant's complaint on merits as per law. The parties are directed to appear before the trial court for further directions at 2 PM on 20.11.2006. The trial court shall take necessary steps for calling the respondents (accused persons) in the complaint case to be decided on merits. A copy of this order be sent to the concerned trial court for information and necessary compliance.


S.N. AGGARWAL
(JUDGE)

NOVEMBER 03, 2006

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